

Criminal Procedure of the Revised Statutes of the State of Texas of 1895."

Bill read third time, and

Pending further action, the Chair announced that the hour fixed for the Senate to go into executive session had arrived, and the Senate accordingly went into executive session upon the Governor's appointments.

AFTER EXECUTIVE SESSION.

In executive session, the following confirmations were had:

Assistant Attorney General—Mann Trice of Dallas county.

Secretary of State—J. W. Madden of Houston county.

Adjutant General—W. H. Mabry of Marion county.

Commissioner of Agriculture, Insurance, Statistics, and History—A. J. Rose of Bell county.

State Health Officer—Dr. R. M. Swearingen of Travis county.

Commissioners of Penitentiaries—William Clemens of Comal county, L. M. Openheimer of Travis county, S. M. Fry of Tarrant county.

Superintendent of Penitentiaries—L. A. Whatley of Cass county.

Assistant Superintendent of Penitentiaries at Huntsville—J. G. Smither of Walker county.

Assistant Superintendent of Penitentiaries at Rusk—J. P. Gibson of Cherokee county.

Financial Agent of Penitentiaries—J. S. Rice of Tyler county.

Inspectors of Penitentiaries—T. E. Durham of Gregg county and Wharton Bates of Brazoria county.

Judge of the Criminal District Court for the counties of Galveston and Harris—E. D. Cavin of Galveston county.

Trustees for House of Correction and Reformatory—W. C. O'Bryan of McLennan county, G. M. Shumate of Coryell county, A. Matthews of Coryell county, vice C. A. Rogers, resigned.

Board of Trustees of the Orphan Asylum—Jink Evans, E. W. Johnson, G. M. Westbrook, all of Navarro county.

Board of Managers of Confederate Home—W. L. Cabell of Dallas county, H. E. Shelley of Travis county, J. B. Rodgers of Travis county, F. R. Lub-buck of Travis county, W. L. Stephenson of Hays county.

Board of Managers for North Texas Hospital for the Insane—J. S. Grinnan, A. H. Ables, W. A. Brooks, James Young, Dr. A. J. Childress, all of Kaufman county.

Board of Managers of Southwestern Hospital for the Insane—T. D. Cobbs, B. F. McNulty, A. E. Devine, Phil Shardein, Dr. H. D. Barnitz, all of Bexar county.

Regents of the University of Texas: G. W. Brackenridge of Bexar county; T. S. Henderson of Milam county.

Board of Trustees of Blind Institute: J. S. Myrick, R. M. Thomson, John O. Johnson, J. G. Booth, W. H. Richardson, all of Travis county.

Thursday, February 4, at 12 m., was fixed as the next date for the Senate to sit in executive session.

Senator Harrison moved to adjourn until 10 a. m. to-morrow.

Senator Wayland moved that the Senate adjourn until 10 a. m. Monday.

The vote being taken on the longest time first,

The Senate adjourned until 10 a. m. Monday by the following vote:

Yeas—14.

Bailey.	Gough.
Beall.	Kerr.
Boren.	Lewis.
Burns.	Presler.
Colquitt.	Ross.
Dibrell.	Stone.
Goss.	Wayland.

Nays—13.

Bowser.	Stafford.
Darwin.	Terrell.
Harrison.	Tillett.
Linn of Wharton.	Turney.
Morriss.	Woods.
Neal.	Yantis.
Rogers.	

Absent.

Yett.

Excused.

Atlee.
Greer.

Linn of Victoria.

SIXTEENTH DAY.

Senate Chamber,

Austin, Tex., Monday, Feb. 1, 1897.

Senate met pursuant to adjournment.

Lieutenant-Governor Jester in the chair.

Roll called. Quorum present, the following Senators answering to their names:

Bailey.	Dibrell.
Boren.	Goss.
Bowser.	Harrison.
Burns.	Kerr.
Colquitt.	Lewis.
Darwin.	Linn of Wharton.

Morriss.	Terrell.
Neal.	Tillett.
Presler.	Turney.
Rogers.	Woods.
Ross.	Yantis.
Stafford.	Yett.
Stone.	

	Absent.
Beall.	Wayland.
Gough.	

	Excused.
Atlee.	Linn of Victoria.
Greer.	

Prayer by Rev. Dr. Smith, of Austin.

Pending the reading of the Journal of Friday,

On motion of Senator Harrison, the same was dispensed with.

On motion of Senator Rogers, Senator Wayland was excused from attendance upon the Senate for to-day, on account of important business.

On motion of Senator Linn of Wharton,

Senator Gough was excused for to-day, Tuesday and Wednesday, on account of important business.

PETITIONS AND MEMORIALS.

By Senator Rogers:

Petition of printers, pressmen and bookbinders of Texas, praying for the passage of Senate bill No. 110, relative to keeping all State printing at home.

Read and referred to Committee on Public Printing.

By Senator Presler:

Petition of citizens of San Saba, to increase and retain the State ranger force.

Read and referred to Committee on Frontier Protection.

BILLS AND RESOLUTIONS.

By Senator Goss:

Senate bill No. 118, a bill to be entitled "An act to repeal article 5000, of title CII, chapter 5, of the Revised Civil Statutes of Texas, and to amend article 4998 of said title and chapter, relating to a lawful fence and the impounding of stock in counties and subdivisions of counties where the stock law has been adopted."

Read first time and referred to Judiciary Committee No. 1.

By Senator Boren:

Senate bill No. 119, a bill to be entitled "An act prohibiting the coloring yellow of any substance designed to be used as a substitute for butter; to prohibit the manufacture, sale, keeping for sale and fraudulent use of substances designed as imitation butter,

and prohibiting hotels and public eating houses from fraudulently deceiving their customers by supplying their tables with imitation butter."

Read first time and referred to Committee on Public Health.

By Senator Linn of Wharton:

Senate bill No. 120, a bill to be entitled "An act to amend article 2540 of the Revised Civil Statutes of Texas, relating to final judgments in cases of forcible entry and detainer in county courts."

Read first time and referred to Judiciary Committee No. 1.

By Senator Turney:

Senate bill No. 121, a bill to be entitled "An act to amend article 5051, Revised Statutes of 1895, relating to county warrants, and to repeal article 1118 of the Code of Criminal Procedure, prohibiting the payment of county scrip except in their order."

Read first time and referred to Judiciary Committee No. 1.

By Senator Turney:

Senate bill No. 122, a bill to be entitled "An act to amend article 1205, Revised Statutes, relating to parties to suits."

Read first time, and referred to Judiciary Committee No. 1.

By Senator Woods:

Senate bill No. 123, a bill to be entitled "An act to amend articles 2453, 2457 and 2463, of the Revised Civil Statutes of the State of Texas, relating to fees of county officers."

Read first time and referred to Judiciary Committee No. 1.

By Senator Woods:

Senate bill No. 124, a bill to be entitled "An act to add articles 1600a and 1600b to the Revised Civil Statutes of the State of Texas."

Read first time and referred to Judiciary Committee No. 1.

By Senator Tillett:

Senate bill No. 125, a bill to be entitled "An act defining what shall be legal tender in the payment of debts, and declaring stipulations and provisions, in contracts, for payment of debts in any particular coin, void."

Read first time and referred to Committee on Finance.

By Senator Terrell:

Senate bill No. 126, a bill to be entitled "An act to amend articles 3304, 3306 and 3328, title 64, chapter 4, of the Revised Civil Statutes of the State of Texas, relating to militia, and to add thereto article 3306b, relating to the formation of battalions of the

Texas Volunteer Guard, and article 3310b, requiring officers to be examined on the duties of a staff officer before being commissioned into the staff corps of the Texas Volunteer Guard, and articles 3325 and 3326, making it an offense, and prescribing the penalty therefor, for any member of the Texas Volunteer Guard to refuse or fail to report for duty when ordered out by proper authority, to suppress riots, tumults, unlawful assemblies, or to repel invasions; and to repeal all laws or parts of laws in conflict herewith."

Read first time and referred to Committee on Military Affairs.

By Senator Terrell:

Senate bill No. 127, a bill to be entitled "An act to provide for the prosecution and punishment of a person found guilty of inducing, or attempting to induce, a witness not to appear or testify in any case in any of the courts of this State, or before any grand jury."

Read first time and referred to Judiciary Committee No. 2.

By Senator Kerr:

Senate bill No. 128, a bill to be entitled "An act to amend article 128, title IX, chapter 1, of the Revised Civil Statutes of the State of Texas, relating to the apprehension of lunatics."

Read first time and referred to Committee on State Asylums.

By Senator Bailey:

Senate bill No. 129, a bill to be entitled "An act to create and establish an industrial institute in the State of Texas and a college for the education of white girls in the arts and sciences."

Read first time and referred to Committee on Education.

By Senator Presler:

Senate joint resolution No. 6, to amend section 1, article VI, of the Constitution of the State of Texas, so as to require the payment of all poll taxes as a prerequisite to voting, and to provide for submitting the same to a vote of the qualified voters of the State."

Read first time and referred to Committee on Constitutional Amendments.

By Senator Bowser:

Senate bill No. 130, a bill to be entitled "An act creating the office of county auditor of Dallas county, Texas, defining his duties, fixing his compensation and providing how such officer shall be appointed."

Read first time and referred to Judiciary Committee No. 1.

By Senator Boren:

A resolution providing for the ap-

pointment, by the President of the Senate, of a committee of three members of the Senate, to visit the State Penitentiaries at Rusk and Huntsville, the State farms, etc., and report back to the Senate the result of their investigations.

Read first time and referred to Committee on State Penitentiaries.

By Senator Ross:

Whereas, The Board of Managers of the Confederate Home will convene to-day, and

Whereas, The Speaker of the House of Representatives having appointed a committee to meet with said Board of Managers to ascertain its condition and needs, if any; therefore,

Resolved, That the President of the Senate appoint a committee of three to act with said committee of the House in visiting the same and ascertain the condition thereof.

Adopted, and the Chair appointed as a committee to act on the part of the Senate, Senators Ross, Bowser and Kerr.

Call concluded.

On motion of Senator Tillett, the regular order of business was suspended to take up, on its second reading,

Senate bill No. 18, a bill to be entitled "An act to amend article 386c, chapter 1, title 18, of the Revised Statutes, relating to cities and towns."

Bill read second time and ordered engrossed.

On motion of Senator Tillett, the constitutional rule requiring bill to be read on three several days was suspended and the bill put upon its third reading and final passage by the following vote:

Yeas—24.

Boren.	Neal.
Bowser.	Presler.
Burns.	Rogers.
Colquitt.	Ross.
Darwin.	Stafford.
Dibrell.	Stone.
Goss.	Terrell.
Harrison.	Tillett.
Kerr.	Turney.
Lewis.	Woods.
Linn of Wharton.	Yantis.
Morriss.	Yett.

Nays—none.

Absent.

Bailey.

Excused.

Atlee.	Greer.
Beall.	Linn of Victoria.
Gough.	Wayland.

Bill read third time and passed by the following vote:

Yeas—24.

Boren.	Neal.
Bowser.	Presler.
Burns.	Rogers.
Colquitt.	Ross.
Darwin.	Stafford.
Dibrell.	Stone.
Goss.	Terrell.
Harrison.	Tillett.
Kerr.	Turney.
Lewis.	Woods.
Linn of Wharton.	Yantis.
Morriss.	Yett.

Nays—none.

Absent.

Bailey.

Excused.

Atlee.	Greer.
Beall.	Linn of Victoria.
Gough.	Wayland.

The Chair laid before the Senate Senate bill No. 36, a bill to be entitled "An act to amend article 723 of the Code of Criminal Procedure in the State of Texas."

Action being on Senator Goss' motion to reconsider the vote by which the bill was ordered engrossed,

Reconsidered.

(Senator Presler in the chair.)

By Senator Goss:

Amend by striking out the words "which error shall be excepted to at the time of the trial."

Lost by the following vote:

Yeas—12.

Burns.	Neal.
Darwin.	Ross.
Goss.	Stone.
Harrison.	Turney.
Lewis.	Woods.
Linn of Wharton.	Yantis.

Nays—13.

Bailey.	Presler.
Boren.	Rogers.
Bowser.	Stafford.
Colquitt.	Terrell.
Dibrell.	Tillett.
Kerr.	Yett.
Morriss.	

Absent.

Beall.

Excused.

Atlee.	Linn of Victoria.
Gough.	Wayland.
Greer.	

The bill was then ordered engrossed by the following vote:

Yeas—16.

Bailey.	Colquitt.
Boren.	Darwin.
Bowser.	Dibrell.

Kerr.	Stafford.
Lewis.	Terrell.
Morriss.	Tillett.
Presler.	Turney.
Rogers.	Yett.

Nays—9.

Burns.	Ross.
Goss.	Stone.
Harrison.	Woods.
Linn of Wharton.	Yantis.
Neal.	

Absent.

Beall.

Excused.

Atlee.	Linn of Victoria.
Gough.	Wayland.
Greer.	

I voted against this bill being engrossed for the reason that I am opposed to the amendment, to-wit: "Provided, such error was excepted to at the time of trial." I am in favor of the original bill, as reported to the Senate by the committee. On the vote for final passage of the bill as amended, I shall vote for its passage, for the reason that I favor all the bill except the amendment, and I can not vote in its favor without voting for the bill as amended. I consider the amendment unjust and oppressive. I believe that if such an error was committed on the trial of a case as injured him, he should be granted a new trial whether the error was excepted to or not. Defendants frequently have no counsel, and frequently those who are represented by counsel are not always in a position to except when the error is committed. An error that injures the rights of the defendant is often overlooked even by eminent counsel, and the defendant should not be made to suffer if he was actually injured by the commission of the error, whether he had no counsel or whether counsel failed to notice the error. I believe every citizen on trial should have a fair and impartial trial; and I believe that if he has been refused a fair trial, and he was injured thereby, the Court of Criminal Appeals should be authorized to reverse the case and order a new trial. I believe that if the error was not calculated to injure the defendant, his case should be affirmed. This is as far as the people directed us to go, and it is as far as my judgment leads me.

YANTIS.

I vote no on the engrossment of this bill because an amendment to said bill has been adopted, making it impossible for the Court of Criminal Appeals to reverse a judgment of the lower

court, notwithstanding the error committed may have injured the rights of the defendant, unless the defendant excepted to the error at the time of trial. It is admitted that the district judge may commit an error to the prejudice of the defendant, but this provision assumes that the attorney for the defendant will not err in that it takes for granted that whatever error the court may commit will be promptly discovered by such attorney and excepted to at the time. Such a provision puts men on a footing of gross inequality before the trial courts and makes it impossible for the Appellate Court to remedy the wrong where palpable injustice has been done, and that, too, even where the record affirmatively shows this fact, and so is repugnant to the sense of justice and denies the fair and impartial trial sought to be secured under our Constitution and laws. If the words, "which error shall be excepted to at the time of the trial," were stricken out, I would cheerfully support the bill. I am in favor of doing away with all trivial technicalities, but when the rights of a defendant are injured and that fact affirmatively appears from the record, I think the Appellate Court should be allowed to reverse the case and that their power to so act should not be made contingent on the one question as to whether or not the defendant excepted to the error at the time of the trial.

GOSS.

Senator Dibrell moved to reconsider the vote by which the bill was ordered engrossed, and to lay that motion on the table.

Tabled by the following vote:

Yeas—14.

Bailey.	Morriss.
Boren.	Presler.
Bowser.	Rogers.
Colquitt.	Stafford.
Dibrell.	Terrell.
Kerr.	Tillett.
Lewis.	Yett.

Nays—11.

Burns.	Ross.
Darwin.	Stone.
Goss.	Turney.
Harrison.	Woods.
Linn of Wharton.	Yantis.
Neal.	

Absent.

Beall.

Excused.

Atlee.	Linn of Victoria.
Gough.	Wayland.
Greer.	

(Lieutenant-Governor Jester in the chair.)

The following House messages were received:

House of Representatives,
Austin, Texas, Feb. 1, 1897.

Hon. George T. Jester, President of the Senate.

I am directed by the House to inform the Senate of the passage of the following bills:

House bill No. 54, a bill to be entitled "An act to amend article 338 of the Penal Code of the State of Texas, adopted A. D. 1895, so as to fix the penalty for unlawfully carrying arms at a fine of not less than \$25 nor more than \$200."

House bill No. 82, a bill to be entitled "An act to amend article 878 of title 17, chapter 9, of the Penal Code, of the State of Texas, and to make the receiving or concealing of stolen property a criminal offense, and to provide appropriate penalties for said offense, and to repeal all laws and parts of laws in conflict with the provisions of this act."

House bill No. 87, a bill to be entitled "An act to amend article 4069, chapter 4, title LXXXVII, of the Revised Civil Statutes of Texas, relating to bonds given by county surveyors."

Respectfully,

LEE J. ROUNTREE, Chief Clerk.

House of Representatives,
Austin, Texas, Feb. 1, 1897.

Hon. George T. Jester, President of the Senate.

I am directed by the House to inform the Senate of the passage of the following bills:

House bill No. 65, a bill to be entitled "An act to define and punish the offense of wilfully or maliciously throwing missiles or firing guns or other firearms at or into moving trains on railroads or any railway depot, private residence, school house, church, storehouse, hotel or other public or private building, sailboat or steamboat in this State."

House bill No. 110, a bill to be entitled "An act to amend articles 2526, 2531 and 2532, of title 49, of the Revised Civil Statutes of Texas, and to repeal article 2527 of said title, relating to forcible entry and detainer."

Passed by two-thirds vote.

Respectfully,

LEE J. ROUNTREE, Chief Clerk.

IN SENATE.

House bill No. 82, a bill to be entitled "An act to amend article 878, ti-

tle 17, chapter 9, of the Penal Code of the State of Texas, and to make the receiving or concealing of stolen property a criminal offense, and to provide appropriate penalties for said offense, and to repeal all laws and parts of laws in conflict with the provisions of this act."

Read first time and referred to Judiciary Committee No. 2.

House bill No. 110, a bill to be entitled "An act to amend articles 2526, 2531 and 2532 of title 49, of the Revised Civil Statutes of the State of Texas, and to repeal article 2527 of said article, relating to forcible entry and detainer."

Read first time and referred to Judiciary Committee No. 1.

House bill No. 65, a bill to be entitled "An act to define and punish the offense of wilfully or maliciously throwing missiles or firing guns or other firearms at or into moving trains on railroads or any railway depot, private residence, schoolhouse, churchhouse, courthouse, storehouse, hotel or other public or private building, sailboat or steamboat in this State."

Read first time and referred to Judiciary Committee No. 2.

House bill No. 54, a bill to be entitled "An act to amend article 338 of the Penal Code of the State of Texas, adopted A. D. 1895, so as to fix the penalty for unlawfully carrying arms, at a fine of not less than \$25 nor more than \$200."

Read first time and referred to Judiciary Committee No. 2.

House bill No. 87, a bill to be entitled "An act to amend article 4069, chapter 4, title LXXXVII, of the Revised Civil Statutes of the State of Texas."

Read first time and referred to Judiciary Committee No. 2.

The Chair gave notice of signing, and did sign after the caption had been read,

House bill No. 3, a bill to be entitled "An act to make an appropriation to pay mileage and per diem of presidential electors of Texas."

At request of Senator Colquitt, the Journal of Friday, January 29, was corrected to show him voting "nay" on the substitute resolution offered by Senator Tillett for the resolution introduced by Senator Stafford.

Senator Stafford requested the Chair to state the final disposition of his said resolution.

The Chair announced that the Journal for Friday, January 29, showed

the substitute offered by Senator Tillett for the said resolution to have been adopted by a yea and nay vote of 15 to 13, the vote of Senator Colquitt being recorded as given in the affirmative, when, in fact, as per statement of Senator Colquitt, it was given in the negative, and which said vote, upon being corrected, showed a tie vote of 14 yeas and 14 nays; that because of the error in tabulating and announcing the vote aforementioned, the tie vote was not shown and the chair had, therefore, not voted on the said question.

After full discussion as to the status of the resolution and the substitute therefor, the Chair ruled that a motion to reconsider the vote by which the resolution as substituted was adopted (as shown by Journal of January 29) was in order.

Senator Lewis moved to reconsider the vote by which the resolution as substituted was adopted.

Reconsidered.

Action then being on the adoption of the substitute resolution (Tillett's) and the tie vote on same being occasioned by the correction of the Journal as aforesaid, the Chair voted "aye," thus adopting the substitute resolution.

The question then being on the adoption of the resolution (Stafford's) as substituted,

Senator Lewis moved to table the resolution as substituted.

Tabled by the following vote:

Yeas—16.

Bowser.	Rogers.
Darwin.	Ross.
Goss.	Terrell.
Harrison.	Tillett.
Kerr.	Turney.
Lewis.	Woods.
Linn of Wharton.	Yantis.
Morriss.	Yett.

Nays—7.

Bailey.	Neal.
Boren.	Presler.
Burns.	Stafford.
Dibrell.	

Present, not voting.

Colquitt.

Absent.

Beall.	Stone.
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Excused.

Atlee.	Linn of Victoria.
Gough.	Wayland.
Greer.	

On motion of Senator Lewis,

Senate bill No. 1, a bill to be entitled "An act to prescribe and define the liability of persons, receivers or cor-

porations operating railroads or street railways for injuries to their servants and employes, and to prohibit contracts between employer and employe, based upon the contingency of the injury or death of the employe, limiting the liability of the employer for damages."

Was made special order for Wednesday, February 3, after morning call, and from day to day.

On motion of Senator Colquitt,

Senate bill No. 52, a bill to be entitled "An act to require every express company to keep a general office in this State, and to furnish such information in relation to its property, indebtedness and business as may be required by the Railroad Commission of Texas."

Was made special order for to-morrow after call.

On motion of Senator Morriss, the Senate adjourned to 10 a. m. to-morrow.

SEVENTEENTH DAY.

Senate Chamber,

Austin, Tex., Tuesday, Feb. 2,

Senate met pursuant to adjournment.

Lieutenant-Governor Jester in the chair.

Roll called. Quorum present, the following Senators answering to their names:

Atlee.	Morriss.
Beall.	Neal.
Boren.	Rogers.
Bowser.	Ross.
Burns.	Stafford.
Colquitt.	Terrell.
Darwin.	Tillett.
Dibrell.	Turney.
Goss.	Wayland.
Harrison.	Woods.
Kerr.	Yantis.
Lewis.	Yett.
Linn of Wharton.	

Absent.

Bailey.	Stone.
Presler.	

Excused.

Gough.	Linn of Victoria.
Greer.	

Prayer by the Chaplain, Rev. F. S. Jackson.

Pending the reading of the Journal of yesterday,

On motion of Senator Woods, the same was dispensed with.

On motion of Senator Linn of Wharton, Ex-Senator Lasker of Galveston

was accorded the privileges and courtesies of the floor.

On motion of Senator Turney,

Senator Presler was excused from attendance upon the Senate for one week, on account of important business.

On motion of Senator Boren,

Senator Stone was excused until Thursday next, on account of important business.

On motion of Senator Rogers,

Senator Bailey was excused until Friday next, on account of important business.

On motion of Senator Harrison,

Senator Beall was excused for yesterday, on account of important business.

On motion of Senator Boren,

Master Garvie Harrison was indefinitely excused, on account of sickness.

On motion of Senator Dibrell, the Engrossing Clerk, W. F. Linn, was excused for yesterday, on account of sickness in his family.

PETITIONS AND MEMORIALS.

By Senator Rogers:

Memorial of Galveston printers, praying for passage of Senate bill No. 110, relative to State printing.

Read and referred to Committee on Public Printing.

By Senator Rogers:

Petition of citizens of Galveston for the passage of Senate bill No. 110, relating to public printing.

Read and referred to Committee on Public Printing.

By Senator Rogers:

Petition of trades unions of Galveston, favoring the passage of Senate bill No. 110, relating to public printing.

Read and referred to Committee on Public Printing.

By Senator Atlee:

Petition of citizens of Southwest Texas, asking for an increased appropriation for the maintenance of the ranger service of the State.

COMMITTEE REPORTS.

Committee Room.

Austin, Texas, Feb. 1, 1897.

Hon. George T. Jester, President of the Senate.

Your Judiciary Committee No. 2, to whom was referred

Senate bill No. 35, a bill to be entitled "An act to amend title VII, chapter 2, of the Penal Code of the State of Texas, by adding after article 198 of said chapter article 198a, for the purpose of prohibiting the playing of